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WATSONVILLE CA 95076

MAILED

JUL 13 2009

OFFICE OF PETITIONS

In re Application :  
Rodric C. Fan et al. :  
Application No. 09/707,326 : DECISION ON APPLICATION  
Filed: November 6, 2000 : FOR PATENT TERM ADJUSTMENT  
Attorney Docket No. M-9630 US :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. 1.705) filed May 11, 2009. Applicant requests that the determination of patent term adjustment be corrected from five hundred twenty (520) days to seven hundred ninety-three (793) days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in *Wyeth v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **HELD IN ABEYANCE** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b). This is true even in this instance where a request for continued examination (RCE) was filed.

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent

term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.



Kery A. Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Examination Policy

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PATENT APPLICATION

ATTORNEY DOCKET NO. TRMB-T9630

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Rodic C. FAN, et al.

Confirmation No.: 9442

Application No.: 09/707,326

Examiner: SHARMA, SUJATHA R.

Filing Date: 11/06/2000

Group Art Unit: 2618

Title: Location Authentication Stamp Attached to Messages

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**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**INDICATED IN NOTICE OF ALLOWANCE**  
**(37 C.F.R. 1.705)**

NOTE: 37 C.F.R. 1.704 (e): "Submission of an application for patent term adjustment under 1.705(b) (with or without request under Sec. 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section."

1. This request for reconsideration of the patent term adjustment indicated in the Notice of Allowance mailed on 3/24/2009

☒ The issue fee is being paid as set forth in the papers attached hereto.

2. Applicant submits herewith a "Statement of the Correct Patent Term Adjustment: Basis(es) Under 1.702 For the Adjustment-Part B." (37 C.F.R. 1.705(b)(2)(i) and (ii)).

3. Any patent granted on this application (37 C.F.R. 1.705(b)(2)(iii)):

☒ is not subject to a terminal disclaimer.

☐ is subject to a terminal disclaimer, and the expiration date specified in the terminal disclaimer is \_\_\_\_\_

4. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 1.704 (37 C.F.R. 1.705(b)(2)(iv)):

☐ there were none (37 C.F.R. 1.705(b)(2)(iv)(B)). ☒ there were as follows (37 C.F.R. 1.705(b)(2)(iv)(A)):

- 3/29/2004, Applicant delay of 65 days in filing response;
- 12/28/2004, RCE filed with Applicant delay of 80 days;
- 8/10/2005, Applicant delay of 87 days in filing response;
- 4/07/2006, Applicant delay of 76 days in filing response;
- 9/12/2006, RCE filed;
- 9/18/2007, Applicant delay of 259 days in filing response (following petition to revive).

5. Also attached hereto is a "Request for Reinstatement For ☐ Full and/or ☐ Part of the Period Adjustment Reduced Pursuant to 1.704(b)-Part C." (37 C.F.R. 1.705(c)).

6. The fee set forth in 1.18(e) (\$200.00), required by 37 C.F.R. 1.705(b)(1), is paid as follows:

Please charge Deposit Account 50-4157 \$ 200.00 . At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 50-4157 pursuant to 37 CFR 1.25.

☐ I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:  
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OR

☒ I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number (571)273-8300 or via electronic submission.  
Date of facsimile/transmission: May 11, 2009  
Typed Name: Brenda Dinapoli  
Signature: /Brenda Dinapoli/

Respectfully submitted,

Rodic C. FAN, et al.

By /John P. Wagner, Jr./

JOHN P. WAGNER, JR.

Attorney/Agent for Applicant(s)

Reg No. : 35,398

Date : May 11, 2009

Telephone : 408-377-0500

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(408) 377-0500

PATENT APPLICATION

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**STATEMENT OF THE CORRECT PATENT TERM ADJUSTMENT:**  
**BASIS(ES) UNDER 1.702 FOR THE ADJUSTMENT**  
**(37 C.F.R. 1.705(b)(2)(i) and (ii))**

1. This statement is being submitted in support of the "Request for Reconsideration of Patent Term Adjustment Indicated in Notice of Allowance" to which this statement is attached.

**37 C.F.R. 1.705(b)(2)(i)**

2. The patent term adjustment shown on the Notice of Allowance is: 520 days

It is respectfully suggested that the correct patent term adjustment under 1.702 is: 793 days

**37 C.F.R. 1.705(b)(2)(ii)**

NOTE: Under 1.705(b)(2)(ii) applicant must set forth: "The relevant dates as specified in 1.703(a) through(e) for which an adjustment is sought and the adjustment as specified in 1.703(f) to which the patent is entitled."

3. The basis(es) on which the applicant seeks adjustment are as follows:

The adjustment is sought for the following date: between 6/30/2004 and 10/24/2005

Adjustment to be made for this date: 273 days = (363d - app. delay of 145d)

Basis: First Action was received 656 days after the 14-mo. date. The 3-yr. rule to allowance was violated by 363 (from 11/06/2003 to 12/28/2004) that did not overlap with the 14-mo. violation of 656 days. Subtraction of app. delays of 65 and 80 days reduces the 3-yr. delay from 363 days to 273 days. Per Wyeth v. Dudas (580 F. Supp. 2d 138; 88 U.S.P.Q.2D (BNA) 1538, September 30, 2008), USPTO's view that any administrative delay under 35 U.S.C.S. § 154(b)(1)(A) overlapped any three-year maximum pendency delay under § 154 (b)(1)(B) could not be squared with language of § 154(b)(1)(B), as "B delay" began when PTO had failed to issue patent within three years, not before.

☐ Plus          additional page(s)

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Date of facsimile/transmission: May 11, 2009

Typed Name: Brenda Dinapoli

Signature: /Brenda Dinapoli/

Respectfully submitted,

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